

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Lead-Based Paint Activities
(LAC 33:III.2805, 2807, 2809, 2811, and 2813) (AQ262)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.2805, 2807, 2809, 2811, and 2813 (Log #AQ262).

The Louisiana lead-based paint rule is more stringent than the federal rule on several requirements. This rule revision will require accreditation every three years instead of annually. The annual requirement causes reciprocity problems, and as a result, instead of experienced personnel working in Louisiana, the companies send their most inexperienced personnel whose training has not expired according to Louisiana regulations. In addition, the requirement for passing the EPA exam every three years is changed to passing an initial exam. The requirement that training providers must be trained and accredited in all of the disciplines that they teach is burdensome and the training is duplicative. Trainers will be required to attend the basic Supervisor training to stay current with the rules and other program changes. Notification of a training class will be reduced from 10 days to 5 days for initial training, and from 5 days to 2 days for refresher training, with an allowance for 24 hours notification for emergency classes. Licensure requirements are being clarified for child-occupied and target housing contractors, and commercial buildings and steel structures contractors. Notification of projects is reduced from 10 days to 5 days, and emergency notification must be submitted within 24 hours of project start. Most of the projects are for schools, and a 10 day delay is too burdensome. Recordkeeping requirements are being reduced from five years to three years. The basis and rationale for this rule are to mirror federal regulations more closely while maintaining protection for public health.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on February 27, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ262. Such comments must

be received no later than March 6, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ262. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33 ENVIRONMENTAL QUALITY

Part III. Air

Chapter 28. Lead-Based Paint Activities—Recognition, Accreditation, Licensure, and Standards for Conducting Lead-Based Paint Activities

§2805. Recognition and Standards for Training Providers

A. Application Process. ~~After March 20, 1998, a~~A training provider shall not provide, offer, or claim to provide lead training courses for accreditation purposes without receiving recognition from the department. For a training provider to receive recognition for itself and its courses from the department, the following procedures shall be followed.

A.1. – B.4.a. ...

b. résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

c. certificates from train-the-trainer courses, lead-specific training courses, and accreditations, as evidence of meeting the training requirements; ~~and~~

d. ~~principal instructors who were recognized initially based on training, education, and demonstrated work experience must provide current accreditation certificates in the appropriate disciplines by July 1, 2003, as required by Subparagraph B.2.c of this Section;~~

5. the training provider shall provide adequate facilities for lecture, course tests, hands-on training, and assessment. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed;

6. – 6.d. ...

e. the lead worker course shall consist of a minimum of ~~16~~24 training hours, with a minimum of eight hours devoted to hands-on training. The minimum curriculum required for this course is established in Paragraph C.5 of this Section;

7. – 9. ...

a. one 1" x 1¼" photograph for the trainee to submit to the department with the application for accreditation~~certification~~;

9.b. – 14.a.iv. ...

b. ~~the annual refresher courses shall last a minimum of eight training hours~~each refresher course, except for the project designer course, shall last a minimum of eight training hours and shall include a hands-on skills assessment if required in the original course. The project designer refresher course shall last a minimum of four training hours and does not require a hands-on skills assessment;

c. ~~for each course offered the training provider shall conduct a hands-on assessment, as applicable, and at the completion of the course, a course test that the student must pass~~ a course test with a score of 70 percent or better; and

B.15. – E. ...

1. the written notification shall be received by the department at least ~~five~~10 days before the start of initial training courses;

2. the written notification shall be received by the department at least ~~two~~five days before the start of refresher training courses;

3. ...

4. in the event that a training course must be scheduled immediately due to an emergency, notification to the department must be made as soon as possible, but no less than 24 hours prior to commencement of the course. Written justification for not notifying the department five working days in advance must be provided with the emergency training request;

54. in the notification, the training provider shall submit to the department the following information:

- a. the name of the training course to be taught;
- b. the dates and length of the training course;
- c. the principal/guest instructors that will be teaching the course;
- d. the name and telephone number of the training manager; and
- e. the location where the course will be taught; and

65. the training course shall not start before the start date noted on the notification.

F. – G.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1666 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), LR 28:2337 (November 2002), amended by the Office of Environmental Assessment, LR 30:2804 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2445 (October 2005), LR 33:**.

§2807. Accreditation of Individuals

A. – A.1.e. ...

2. ~~After March 20, 1998, i~~Individuals must be accredited by the department to engage in lead-based paint activities.

3. ...

4. ~~After November 30, 1998, i~~Individuals seeking accreditation in the lead inspector, risk assessor, lead project supervisor, or lead project designer disciplines must pass the applicable state examination given by the department or its proxy. Individuals must pass the state examination, with a score of 70 percent or above, ~~within six months of receiving a course completion certificate.~~ Individuals who fail the state examination will be allowed to take the examination again within a six-month period. Individuals who fail the state examination twice must retake the initial course before they will be allowed to retake the state examination. Anyone who fails the test three times within a six-month period may not apply for testing in that category for 90 days.

A.5. – D.3. ...

4. If the individual fails to receive refresher training within one year after the accreditation expiration date, the individual must complete a refresher training course with a course test and hands-on assessment, as applicable, retake the initial training course for the appropriate discipline in order to become recertified.

5. If an individual has not completed a refresher course within three years, the department shall require the applicant to:~~Any applicant who was accredited initially in accordance with Subsection C of this Section or prior to November 30, 1998, must pass the~~

~~appropriate state examination prior to being reaccredited by the department.~~

a. pass the state lead certification examination in the appropriate discipline; or

b. complete a refresher training course with a course test and hands-on assessment, as applicable.

6. If an individual has not completed a refresher course within five or more years, the department shall require the applicants to complete a refresher training course with a course test and hands-on assessment, as applicable, and pass the state lead certification examination in the appropriate discipline every three years.

E. – E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1669 (December 1997), amended LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), LR 28:2337 (November 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 33:**.

§2809. Licensure of Lead Contractors

A. Licensure Requirements

1. In order to bid and/or perform abatement activities, lead contractors must obtain a lead-based paint abatement and removal license from the State of Louisiana Licensing Board for Contractors. ~~As of November 1, 1998, p~~ Prior to obtaining an initial or renewal license, the lead contractor must submit an application for approval, along with the appropriate fees as required in LAC 33:III.223, to the Office of Environmental Services, Air Permits Division, and certify to the department that the following criteria have been, or will be, met.:

a. For target housing and child-occupied facilities, each qualifying person who conducts lead-based paint activities for the lead contractor is annually accredited as a lead project supervisor in accordance with the provisions of LAC 33:III.2807, and forms LPF-2ci and LPF-2th for each such person have been submitted.;

b. For commercial buildings and steel structures, each qualifying person for the lead contractor is certified as a lead supervisor/competent person in accordance with SSPC C-3 or equivalent Occupational Safety and Health Administration (OSHA) competent person training, and form LPF-2ci for each such person has been submitted.

~~c.~~ ¶The lead contractor has access to at least one disposal site to receive lead-contaminated waste that may be generated by the lead contractor during the term of the license.;

d. For target housing and child-occupied facilities, the lead contractor will incorporate the work practice standards in LAC 33:III.2811, and for commercial buildings and steel structures, the lead contractor will adhere to OSHA work practice standards and SSPC requirements, so as to prevent the contamination or recontamination of the environment and protect the public health from the hazards of exposure to lead.;

~~e.~~ ¶The lead contractor possesses a worker protection and medical surveillance program consistent with the requirements of the Occupational Safety and Health Administration (OSHA) and/or the state health officer.;

~~fe.~~ For target housing and child-occupied facilities, an accredited lead project supervisor will~~shall~~ be present at all times during ~~all of the lead contractor's abatements;~~
and

~~g.~~ For commercial buildings and steel structures, a supervisor who is a certified lead supervisor/competent person in accordance with SSPC C-3 or equivalent OSHA competent person training will be available during commercial lead abatement activities.

~~hf.~~ The lead contractor will~~shall~~ maintain all records as required by this Chapter.

2. Once the person receives a letter of approval, he can apply to the State of Louisiana Licensing Board for Contractors to request a license, subject to its approval.~~The qualifying party must be accredited as a lead project supervisor.~~

~~a.~~ Each person who conducts lead-based paint activities for the lead contractor shall be accredited annually in accordance with the provisions of LAC 33:III.2807.

~~b.~~ The lead contractor shall have access to at least one disposal site to receive lead-contaminated waste that may be generated by the lead contractor during the term of the license.

~~c.~~ The lead contractor shall incorporate the work practice standards in LAC 33:III.2811 so as to prevent the contamination or recontamination of the environment and protect the public health from the hazards of exposure to lead.

~~d.~~ The lead contractor shall possess a worker protection and medical surveillance program consistent with the requirements of OSHA and/or the state health officer.

~~e.~~ An accredited lead project supervisor shall be present at all times during all of the lead contractor's abatements.

~~f.~~ The lead contractor shall maintain all records as required by this Chapter.

A.3. – B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1671 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), LR 28:2338 (November 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 33:**.

§2811. Work Practice Standards for Conducting Lead-Based Paint Activities for Target Housing and Child-Occupied Facilities

A. – E.4. ...

a. Regular notification shall be made using a department-approved form and be postmarked or hand-delivered at least ~~five~~¹⁰ working days prior to beginning any on-site work at the lead abatement project. The notification must be accompanied by the appropriate fees (LAC 33:III.223).

b. The project shall not start before the start date noted on the Lead Project Notification (LPN). The Office of Environmental Services, Air Permits Division, shall be notified if the operation will stop for a day or more during the project time noted on the LPN or if the project has been canceled or postponed. The firm shall also give notice 24 hours before the completion of a project. Notice ~~shall~~^{should} be submitted to the department with written follow-

up and fax notification to the appropriate regional office.

c. ~~A~~Notifications of less than ~~five~~10 working days constitutes an emergency notification and must be submitted within 48 hours of the start of the project. The notification must be accompanied by the appropriate processing fees (LAC 33:III.223).

4.d. – 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1672 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2459 (November 2000), repromulgated LR 27:39 (January 2001), amended LR 28:2338 (November 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 33:**.

§2813. Recordkeeping Requirements for Lead-Based Paint Activities

A. All records, reports, and plans required by this Chapter for inspections, hazard screens, risk assessments, and abatements shall be maintained by the owner of the residence, in the case of (target housing), or the owner or operator of a residential dwelling or child-occupied building, and by the contractor or accredited individual who conducted the activities, for not less than five at least three years. The contractor or accredited individual shall provide copies of these reports to the owner/operator who contracted for its services. Any person who is required by this Chapter to maintain records may utilize the services of competent organizations such as industry trade associations and employee associations to maintain such records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1676 (December 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 33:**.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

LOG #: AQ262

Person

Preparing

Statement: Jodi G. Miller Dept.: Environmental QualityPhone: 225-219-3004Office: OESReturn P.O. Box 4314Rule Lead-Based Paint ActivitiesAddress: Baton Rouge, LA 70821-4314Title: (LAC 33:III.2805, 2807, 2809, 2811,
and 2813)

Date Rule

Takes Effect: Upon promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no implementation costs to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Lead-based paint contractors will benefit from the department omitting the requirement to retake the lead exam every three years. The proposed change will require an initial exam only. No additional costs of any kind will result from the proposed amendment. There will be no effect on revenue collections for lead training providers and trainers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

LFO 03/09/2001

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

In several areas the Louisiana lead-based paint rule is more stringent than the federal rule. Accordingly, the present Louisiana requirement of passing the EPA exam every 3 years is reduced by this rule amendment to passing an initial exam. This change is in accordance with the EPA and some sister states. The required notification of a training class is reduced from 10 days to 5 days for initial training, and from 5 days to 2 days for refresher training, with an allowance for 24 hours notification for emergency classes. Recordkeeping requirements are also being reduced — from 5 years to 3 years, in line with state requirements.

In addition, licensure requirements are being clarified for child-occupied and target housing contractors, and commercial buildings and steel structures contractors. Notification of projects is being reduced from 10 days to 5 days, and emergency notification and must be submitted within 48 hours of project start. Most of the projects are for schools, and 10 days delay is burdensome.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This rule is needed to bring the state regulations in line with the federal regulations, and to clarify the licensure requirements for child-occupied and target housing contractors and commercial buildings and steel structures contractors.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

This rule change will not result in any increase in the expenditure of funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

This is not applicable.

- (a) ____ Yes. If yes, attach documentation.
(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED**

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

| <u>COSTS</u> | <u>FY 07-08</u> | <u>FY 08-09</u> | <u>FY 09-10</u> |
|-----------------------------|-----------------|-----------------|-----------------|
| PERSONAL SERVICES _____ | | | |
| OPERATING EXPENSES _____ | | | |
| PROFESSIONAL SERVICES _____ | | | |
| OTHER CHARGES _____ | | | |
| EQUIPMENT _____ | | | |
| TOTAL | -0- | -0- | -0- |
| MAJOR REPAIR & CONSTR. | | | |
| POSITIONS (#) | -0- | -0- | -0- |

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

There will be no additional costs or savings as a result of this rule.

3. Sources of funding for implementing the proposed rule or rule change.

| <u>SOURCE</u> | <u>FY 07-08</u> | <u>FY 08-09</u> | <u>FY 09-10</u> |
|-----------------------------|-----------------|-----------------|-----------------|
| STATE GENERAL FUND _____ | | | |
| AGENCY SELF-GENERATED _____ | | | |
| DEDICATED _____ | | | |
| FEDERAL FUNDS _____ | | | |
| OTHER (Specify) _____ | | | |
| TOTAL | -0- | -0- | -0- |

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The Lead Hazard Reduction Fund (La. R.S. 30:2351.41) has sufficient funds.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There will be no cost or savings to local governmental units as a result of the implementation of the rule.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

No sources of funding are affected.

FISCAL AND ECONOMIC IMPACT STATEMENT WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

| REVENUE INCREASE/DECREASE | FY 07-08 | FY 08-09 | FY 09-10 |
|---------------------------|----------|----------|----------|
| STATE GENERAL FUND | | | |
| AGENCY SELF-GENERATED | | | |
| RESTRICTED FUNDS* | | | |
| FEDERAL FUNDS | | | |
| LOCAL FUNDS | | | |
| TOTAL | -0- | -0- | -0- |

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase or decrease in revenues is expected from the proposed action.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Lead-based paint contractors will benefit from the department omitting the requirement to retake the lead exam every three years. The proposed change will require an initial exam only. No additional costs of any kind will result from the proposed amendment.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will not be an impact on receipts and/or income as a result of this rule change.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will not be any impact from the proposed rule change on competition or employment in the public and private sectors.